



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

URGENT LEGAL MATTER – PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

December 20, 2016

Tyco International c/o
Greg Bibler, Esq.
Goodwin Proctor LLP
100 Northern Avenue
Boston, MA 02210

Re: Invitation to Perform or Finance Proposed Cleanup Activities for the Keddy Mill
Superfund Site in Windham, Maine

Dear Mr. Bibler:

The U.S. Environmental Protection Agency (“EPA”) has received and reviewed your August 24, 2016 response on behalf of Tyco International (“Tyco”) to EPA’s General Notice of Potential Liability (“Notice Letter”) relating to the Keddy Mill Superfund Site located at 7 Depot Street in Windham, Maine (“Site”). EPA recognizes that in response to the Notice Letter, Tyco has sent a demand for indemnification to ITT Corporation. Because Tyco received a Notice Letter, EPA is notifying you of forthcoming removal activities at the Site which Tyco is invited to perform or finance.

Under CERCLA, EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment, i.e., for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the Site. Hazardous substances involved in the release or threat of release of hazardous substances at the Site include, but are not limited to polychlorinated biphenyls (“PCBs”) and metals (arsenic, cadmium, chromium and lead). EPA has spent public funds and is considering spending additional public funds to investigate and address the releases and/or threatened release(s) at the Site. Based on information presently available to EPA, EPA has determined that Tyco is potentially liable under CERCLA for the cleanup of the Site, which Tyco is invited to perform or finance. Unless a potentially responsible party (“PRP”) or parties commit to properly performing or financing such actions, EPA will perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

EXPLANATION OF POTENTIAL LIABILITY

Under CERCLA, specifically Sections 106(a) and 107(a), 42 U.S.C. §§9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and other laws, potentially responsible parties ("PRPs") may be required to implement cleanup actions deemed necessary by EPA to protect public health, welfare, or the environment. PRPs may also be responsible for all costs incurred by the Government in responding to any release or threatened release at the Site, unless the PRP can show divisibility or any of the other statutory defenses. Such actions and costs may include, but are not limited to: expenditures for investigations, planning, response, disposal, oversight and enforcement activities.

PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

As previously stated in EPA's Notice Letter, based on evidence evaluated in connection with its investigation of the Site, EPA has information indicating that Tyco is a PRP under Section 107(a) of CERCLA with respect to this Site. Specifically, EPA has reason to believe that Tyco is a successor to a former owner/operator of the Site at the time of disposal of hazardous substances at the Site.

OUTLINE OF SITE RESPONSE ACTIVITIES

To date, EPA has taken the following response actions at the Site under the authority of the Superfund Program including:

1. EPA conducted a Preliminary Assessment Site Inspection on December 21, 2011, completed a Trip Report in October 2012, and completed a Final Site Investigation Report on January 15, 2013;
2. EPA completed the Hazard Ranking Listing Package for proposal of the Site to the NPL in December 2013;
3. Following the May 12, 2014 listing of the Site to the NPL in the Federal Register, 79 FR 26853, EPA initiated a Remedial Investigation ("RI") in 2015 to identify the characteristics of the Site, to define the nature and extent of soil, air, surface water/sediment, fish and ground water contamination at the Site, and to characterize the risk posed by the Site; and
4. EPA conducted a removal evaluation of the Site mill building in 2016 and determined that a Non-Time Critical Removal Action ("NTCRA") is warranted at the Site, and that an Engineering Evaluation/Cost Analysis ("EE/CA") should be conducted with respect to demolition of the building.

Due to the presence of hazardous substances, including PCBs, at the mill, and in light of other factors, EPA has determined that there is an imminent and substantial endangerment to public health, welfare, or the environment. In response, EPA plans to conduct the following removal activities at the Site: perform an EE/CA with respect to demolition of the building as a NTCRA.

An EE/CA is necessary to: address the contamination in the deteriorating facility building and its contents due to the threat that the contamination poses to public health or welfare or the environment. Specifically, the EE/CA will evaluate options to:

- Eliminate trespasser exposures to elevated levels of PCBs inside the building; and
- Eliminate PCB migration from the building to the Presumpscot River, subsequently reducing human exposures to PCBs via ingestion of PCB-impacted fish.

The decision to proceed with an EE/CA is consistent with EPA guidance regarding Superfund Accelerated Cleanup Model early actions and the long-term Site remedial strategy to minimize both exposures to, and migration of, contaminants into the Presumpscot River and associated human health and environmental receptors.

INVITATION TO PERFORM SITE RESPONSE ACTIVITIES

Before EPA spends public funds to undertake the removal action at the Site, EPA urges Tyco to participate in removal activities or finance all the removal activities outlined above. Any such work performed by Tyco in its capacity as a PRP may be conducted pursuant to an administrative order on consent and an EPA-approved workplan as authorized by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Prior to final issuance of such an order, a draft order would be sent to you or your representative for review and comment.

PRP RESPONSE AND EPA CONTACT

You should contact EPA within **ten (10) business days** after receipt of this letter to indicate Tyco's willingness to perform or finance the response activities outlined above. If EPA does not receive a response within that time, EPA will assume that Tyco does not wish to negotiate a resolution of your liabilities in connection with the EE/CA and that you have declined any involvement in performing the EE/CA. Be advised, however, that liability under CERCLA is joint and several; therefore, each PRP is potentially liable for undertaking all response actions or reimbursing the Government for the entire amount of its response costs.

Please provide the name, address, and telephone number of a designated contact for future communications. Your written response, including any technical comments or questions concerning the proposed response activities, should be directed to:

Leslie McVickar
Remedial Project Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
5 Post Office Square, Suite 100 (OSRR07-4)
Boston, MA 02109-3912
617-918-1374

Legal questions and all communications from counsel should be directed to:

Susan Scott, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
617-918-1778

DECISION NOT TO USE SPECIAL NOTICE

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and the PRPs to conduct or finance response activities. The use of special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

Due to the exigencies posed by conditions present at the Site, removal activities must be conducted as expeditiously as possible. EPA has therefore decided not to invoke the Section 122(e) special notice procedures with respect to CERCLA removal actions at this Site. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium, but will continue the response action as planned unless such discussions lead expeditiously to a settlement.

INFORMATION TO ASSIST YOU

EPA would like to encourage communication between you, other PRPs, and EPA. A Notice of Potential Liability with an invitation to perform the EE/CA has also been sent to ITT Corporation and Keddy Mill Enterprises, LLC. You or your attorney may wish to discuss the matters set forth in this letter with such parties or their attorneys.

SITE ACTIVITY OUTSIDE EPA ACTIONS

If you are already involved in discussions with state or other local authorities or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities. However, you are

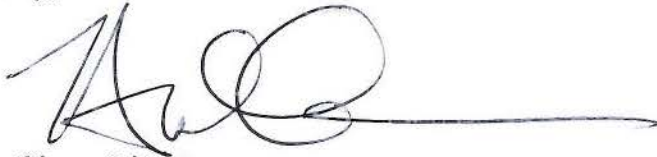
advised to report the status of any such discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

PURPOSE AND USE OF THIS NOTICE

The factual and legal discussions contained in this letter are intended solely to provide notice and information. Such discussions are not intended to be, and cannot be, relied upon as EPA's final position on any matter set forth herein.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to be 'B. Olson', with a long horizontal line extending to the right.

Bryan Olson, Director
Office of Site Remediation and Restoration

cc: Rebecca Hewett, Maine DEP, Project Manager
Andy Raddant, Department of the Interior, Federal Natural Resource Trustee
Ken Finkelstein, NOAA, Federal Natural Resource Trustee
Susan Scott, EPA, Senior Enforcement Counsel
Leslie McVickar, EPA, Remedial Project Manager
Alex Sherrin, EPA, On-Scene Coordinator
Donna Murray, EPA, Enforcement Coordinator
Patti Ludwig, EPA, CERCLIS Data Administrator
EPA, OSRR Records Center

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Tyco International c/o
Greg Bibler, Esq.
Goodwin Proctor LLP
100 Northern Avenue
Boston, MA 02210



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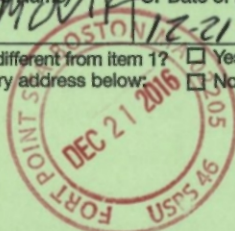
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Tyco International c/o
Greg Bibler, Esq.
Goodwin Proctor LLP
100 Northern Avenue
Boston, MA 02210

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